

*Response to Non-Compliant Amendment
09/908,983***REMARKS**

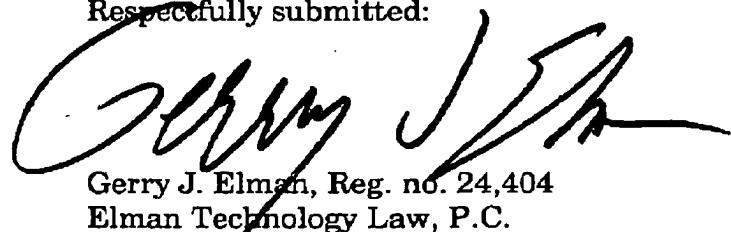
Applicant wishes to place on record the facts relating to the filing date of the amendment to which the present submission relates, namely the document entitled Response 01 in the above-captioned case. The amendment responds to an Examiner's Action mailed March 22, 2004, and was submitted along with the fee for a three-month extension of time on the last date permitted by statute for a response.

After 11 PM on September 22, 2004, applicant's patent attorney Donna Rogers Maddox started to transmit Response 01 by fax from Media, Pennsylvania, to the PTO's official fax number 703-872-9306 accompanied by a signed Certificate of Transmission under 37CFR 1.8, dated September 22, 2004. She had reason to believe that the transmission would be completed by midnight that date. However, problems were encountered during transmission, and five attempts were needed to complete the transmission. The entire transmission of Response 01 was not completed until after midnight. Nevertheless applicant submits that the effective filing date of the fax transmission of Response 01 was September 22, 2004, because it was accompanied by a duly executed Certificate of Transmission under 37 CFR 1.8 dated September 22, 2004.

However, out of an abundance of caution, another copy of Response 01 was submitted by first class mail from Hawaii on September 22, 2004, with its own Certificate of First Class Mailing under 37CFR 1.8. This second submission was received and date-stamped by the OIPE on September 27, 2004. Applicant submits that this second filing was also entitled to the September 22, 2004 filing date by virtue of the aforementioned Certificate of First Class mailing, for the purpose of meeting the deadline for response to the Examiner's Action.

Please address any questions or comments to the undersigned attorney of record.

Respectfully submitted:



Gerry J. Elman

Gerry J. Elman, Reg. no. 24,404
Elman Technology Law, P.C.
Customer no. 003775

December 20, 2004

Telephone: 610-892-9942
Fax: 925-226-4995
email: gerry@elman.com